

REMARKS

Applicants request favorable reconsideration and withdrawal of the rejections set forth in the above-mentioned Office Action in view of the following remarks.

Claims 1-11 remain pending, with claims 1, 6, and 7 being independent claims. The claims have not been amended herein.

Claims 1-3 and 5-10 are rejected in the Office Action under 35 U.S.C. § 102(e) as being anticipated by Elston et al. (U.S. Patent Application Pub. No. 2002/0143655). Claims 4 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Elston et al. in view of Official Notice.

Applicants respectfully traverse the rejections, and submit that the invention recited in the claims is patentably defined over the cited reference and the Official Notice taken in the Office Action for at least the following reasons.

With respect to independent claim 1, the Office Action asserts that Elston et al. discloses a method for facilitating the processing of requests for an item comprising, inter alia, evaluating a first set of criteria related to information from a customer to determine if a request involves potential fraud, and selectively evaluating, based upon the evaluation of the first set of criteria, a second set of criteria related to the information to determine if the request involves potential fraud.

Applicants submit, however, that Elston et al. does not disclose or suggest both evaluating a first set of criteria related to the information related to a customer to determine if a request for an item involves potential fraud, and selectively evaluating, based upon the evaluation of the first set of criteria, a second set of criteria related to the information relating to the

customer to determine if the request involves potential fraud, as recited in the method of independent claim 1. Elston et al. discloses multiple security protocols. In Applicants' view, however, the number of security protocols actually used for a given transaction depends on the identification and authorization capabilities of each customer's electronic device and the level of security required for the transaction. See, e.g., Elston et al., paragraph [0386]. Elston et al. does not disclose that the number of security protocols used is in any way dependent on criteria obtained from other security protocols. That is, there is nothing "selective" about the system of Elston et al., a predetermined number of security protocols are performed for each specific case, irrespective of any information obtained from the security protocols. Thus, Elston et al. fails to disclose or suggest the synergy recited in claim 1 between evaluating a first set of criteria for evidence of fraud and the selective evaluation of a second set of criteria for further evidence of fraud based on the evaluation of first set of criteria.

Moreover, Elston et al. appears to include only one evaluation of what security protocols to use, and thus, presumably, only one final analysis of the results of the security protocols. See Elston et al., paragraph [0386]. Thus, while multiple protocols may be used, there is only one "step" of analysis to make a potential fraud determination of Elston et al. Applicants' invention, as recited in independent claim 1, involves a step of evaluating a first set of criteria for potential fraud, and then a second step selectively evaluating a second set of criteria based upon the first set of criteria.

Independent claim 6 recites modules which are configured to evaluate information relating to the customer in a similar manner to the step recited in independent claim 1, and independent claim 7 also recites evaluating first and second sets of criteria related to the information relating to a caller to determine if a request involves fraud in a similar manner to the

aforementioned steps of independent claim 1. Thus, Applicants submit that independent claims 6 and 7 are distinguishable from Elston et al. for at least the same reasons as described above in conjunction with independent claim 1.

For at least the foregoing reasons, Applicants submit that independent claims 1, 6, and 7 are patentably distinguishable from Elston et al.

With respect to the rejection under Section 103 of certain dependent claims, Applicants again traverse the Official Notice taken in the Office Action and assert that the features of Applicant's invention are not obvious when considered in combination with the other elements of Applicant's inventions.

The latest Office Action asserts that in the Amendment of April 8, 2008, Applicants failed to state why the Official Notice statement is not to be considered common knowledge or well known in the art, and, hence, the traversal was inadequate.

Applicants submit, however, that the traversal of the Official Notice as stated in the previous Amendment was adequate. In the Amendment, Applicants asserted that the features of Applicant's invention are not obvious when considered in combination with the other elements of Applicant's inventions. Applicants submit that providing a more detailed description of why the facts taken as common knowledge in the Official Notice are actually not common knowledge, as the Office Action apparently is attempting to require, is unreasonable, if not impossible. In essence, Applicants would be required to "prove a negative," that the features asserted to be common knowledge in fact are not common knowledge. Nothing in MPEP § 2144.03 mandates such a showing, but rather this section of the MPEP merely requires that Applicants state why the notice fact is not considered to be common knowledge or well-known in the art. In this case,

Applicants provided such a statement, namely, that noticed facts of the Office Action are not well known when considered in combination with the other elements of Applicants' invention.

Accordingly, Applicants again traverse the Official Notice taken in the Office Action, and request that the Office provide documentary evidence in support of the Official Notice. See MPEP § 2144.03.

Applicants submit that all of the pending claims are allowable over the references of record, and that the application is in condition for allowance. Favorable reconsideration, withdrawal of the rejections, and passage to issue of the present application are earnestly solicited.

Any fee required in connection with this paper should be charged to Deposit Account No. 06-1205.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our New York office at the address shown below.

Respectfully submitted,

/Donald H. Heckenberg, Jr./

Donald H. Heckenberg, Jr.
Attorney for Applicants
Registration No. 60,081

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200